

EXECUTION COPY

SECURITY AND INTERCREDITOR AGREEMENT

dated as of March 3, 2009

among

TALF LLC,
as Borrower,

FEDERAL RESERVE BANK OF NEW YORK,
as Senior Lender,

UNITED STATES DEPARTMENT OF THE TREASURY,
as Subordinated Lender,

FEDERAL RESERVE BANK OF NEW YORK,
as Controlling Party,

and

THE BANK OF NEW YORK MELLON,
as Collateral Agent

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| Exhibit B | Form of Incumbency Certificate |

SECURITY AND INTERCREDITOR AGREEMENT

This SECURITY AND INTERCREDITOR AGREEMENT dated as of March 3, 2009 (this “**Agreement**”) among TALF LLC, a Delaware limited liability company (the “**Borrower**”), FEDERAL RESERVE BANK OF NEW YORK, as Senior Lender, UNITED STATES DEPARTMENT OF THE TREASURY, as Subordinated Lender, FEDERAL RESERVE BANK OF NEW YORK, as Controlling Party and THE BANK OF NEW YORK MELLON, as collateral agent for the Secured Parties hereinafter referred to (in such capacity, together with its successors in such capacity, the “**Collateral Agent**”).

WHEREAS, concurrently with the execution and delivery of this Agreement, the Borrower, the Senior Lender, the Subordinated Lender and the Controlling Party are entering into the Credit Agreement dated as of the date hereof (the “**Credit Agreement**”) pursuant to which the Lenders have agreed to make the Loans to the Borrower thereunder upon the terms and subject to the conditions set forth therein; and

WHEREAS, the proceeds of the Loans shall be used by the Borrower to acquire assets (including by way of assignment) pursuant to the Put Option Agreement; and

WHEREAS, it is a condition precedent to the obligations of the Lenders to make the Loans to the Borrower under the Credit Agreement that the Borrower shall have executed and delivered this Agreement; and

WHEREAS, contemporaneously herewith the Borrower, the Collateral Agent and the Securities Intermediary are executing and delivering the Collateral Account Control Agreement; and

WHEREAS, the Borrower and the Secured Parties agree that the Collateral Agent shall administer the Collateral, and the Collateral Agent is willing to administer the Collateral, pursuant to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. *Definitions.*

(a) *Terms Defined in Credit Agreement.* Terms defined in the Credit Agreement and not otherwise defined in this Section have, as used herein, the respective meanings provided for therein. The rules of construction specified in Sections 1.02 and 1.03 of the Credit Agreement also apply to this Agreement.

(b) *Terms Defined in UCC.* As used herein, each of the following terms has the meaning specified in the UCC:

| <u>Term</u> | <u>UCC Section</u> |
|------------------------|---------------------------|
| Account | 9-102 |
| Authenticate | 9-102 |
| Chattel Paper | 9-102 |
| Deposit Account | 9-102 |
| Document | 9-102 |
| Entitlement Holder | 8-102 |
| Financial Asset | 8-102 & 8-103 |
| General Intangibles | 9-102 |
| Instrument | 9-102 |
| Investment Property | 9-102 |
| Letter-of-Credit Right | 9-102 |
| Proceeds | 9-102 |
| Security | 8-102 |
| Securities Account | 8-501 |
| Security Entitlement | 8-102 |
| Supporting Obligation | 9-102 |

(c) *Additional Definitions.* The following additional terms, as used herein, have the following meanings:

“**Cash Collateral Account**” means such sub-accounts of the Collateral Account that shall hold the amounts required to be deposited thereto pursuant to Section 5(b), which amounts (x) shall be held in cash and Permitted Investments and (y) may be used in accordance with Section 5(d).

“**Collateral**” has the meaning set forth in Section 2(a) hereof.

“**Collateral Account**” means, collectively, the accounts maintained by the Borrower with the Securities Intermediary for the purposes set forth in this Agreement, including the Cash Collateral Account, the Expense Reimbursement Account, the Loan Proceeds Account and all other accounts and sub-accounts established thereunder for the purpose of holding property pursuant to this Agreement.

“**Collateral Account Control Agreement**” means a Collateral Account Control Agreement substantially in the form of Exhibit A (with any changes that the Controlling Party shall have approved) among the Securities Intermediary, the Borrower and the Collateral Agent.

“**Control**” has the meaning specified in UCC Section 8-106, 9-104, 9-105, 9-106 or 9-107, as may be applicable to the relevant Collateral.

“Costs and Expenses” means each of the following to the extent owing by the Borrower: (i) all reasonable costs, disbursements (including any advances or overdrafts) and expenses incurred or paid by, or owing to the Administrator, the Securities Intermediary, the Investment Manager, the Senior Lender, the Subordinated Lender, the Collateral Agent and the Controlling Party and their respective advisors, agents and counsel in connection with (A) the administration of the Collateral (including the Collateral Account) and the delivery and performance of the Transaction Documents, and any amendment, supplement or modification to the Transaction Documents, (B) the administration and preservation of the Borrower, including all reasonable audit, accounting, legal and other professional fees and expenses and other administrative costs of the Borrower (in the case of clauses (A) and (B) to the extent payable by the Borrower pursuant to the Transaction Documents) and (C) the enforcement, exercise or preservation of any rights or remedies under the Transaction Documents and such other instruments and documents related thereto, including, in the case of clauses (A), (B) and (C), reasonable legal, audit, accounting and other professional fees and expenses of any service providers; and (ii) all taxes that are determined to be owing by the Borrower from time to time.

“Expense Reimbursement Account” means such sub-account of the Collateral Account holding cash and Permitted Investments that may be used at any time and from time to time to pay or record expenses pursuant to Section 5(c).

“Fees” means (a) the fees of the Collateral Agent and the Administrator under the Fee Letter and (b) the management fees of the Investment Manager under the Investment Management Agreement.

“Loan Proceeds Account” means the sub-account of the Collateral Account maintained exclusively for the deposit of the proceeds of Loans.

“Officer’s Certificate” means, with respect to any entity, a certificate signed by the Chairperson, the Vice Chairperson, the President, any Vice President, any Assistant Vice President, the Treasurer, any Assistant Treasurer or any other duly authorized signatory of such entity.

“Party” means a party to this Agreement.

“Payment Calculation Report” means a report prepared by the Administrator pursuant to Section 2.01(a)(iii) of the Administration Agreement and used as a basis for the Controlling Party to approve payments to be made by the Borrower on the Payment Date scheduled to occur immediately succeeding delivery thereof.

“Permitted Investments” means investments consistent with an investment plan approved in writing by the Senior Lender and the Subordinated Lender.

“**Proper Instructions**” has the meaning set forth in Section 7(a)(iii).

“**Purchase**” has the meaning set forth in the Put Option Agreement.

“**Purchase Consideration**” has the meaning set forth in the Put Option Agreement.

“**Purchased Assets**” has the meaning set forth in the Put Option Agreement.

“**Records**” has the meaning set forth in Section 29.

“**Secured Obligations**” means collectively, (i) the Borrower’s obligations to the Senior Lender, the Subordinated Lender, the Controlling Party, the Collateral Agent, the Securities Intermediary, the Administrator and the Investment Manager under each Transaction Document, including the Obligations and, without duplication, (ii) the Borrower’s obligations to the Seller under the Put Option Agreement.

“**Secured Parties**” means the holders from time to time of the Secured Obligations.

“**Securities Intermediary**” means The Bank of New York Mellon, in its capacity as securities intermediary (within the meaning of UCC Section 8-102(a)(14)) in respect of the Collateral Account.

“**Securities System**” has the meaning set forth in Section 7(c)(i) hereof.

“**Security Interest**” means the security interest in the Collateral granted hereunder.

“**Seller**” has the meaning set forth in the Put Option Agreement.

“**Specified Actions**” has the meaning set forth in Section 6(d) hereof.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that if perfection or the effect of perfection or non perfection or the priority of the Security Interest on any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “**UCC**” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non perfection or priority.

(d) *Terms Generally.* The definitions of terms herein (including those incorporated by reference to the UCC or to another document) apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter

forms. The words “**include**”, “**includes**” and “**including**” shall be deemed to be followed by the phrase “**without limitation**”. The word “**will**” shall be construed to have the same meaning and effect as the word “**shall**”. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (iii) the words “**herein**”, “**hereof**” and “**hereunder**”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, this Agreement and (v) the word “**property**” shall be construed to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(e) *Consent Rights of Subordinated Lender.* If at any time the United States Department of the Treasury is the Controlling Party pursuant to the definition thereof set forth in the Credit Agreement, all consent rights reserved to the Subordinated Lender in this Agreement at such time shall instead be exercisable by the Senior Lender.

Section 2. *Security Interest.*

(a) In order to secure the Secured Obligations, the Borrower hereby grants to the Collateral Agent for the benefit of the Secured Parties holding such Secured Obligations a continuing security interest in all of the following property of the Borrower whether now owned or existing or hereafter acquired or arising and regardless of where located (the “**Collateral**”):

(i) all Purchased Assets and Related Recourse Rights and all of the Borrower’s rights under the Transaction Documents;

(ii) all right, title and interest of the Borrower in all Securities Accounts including, without limitation, the Collateral Account, and for each such Securities Account, all Financial Assets held therein or credited thereto (including all cash, Instruments and Investment Property) and all Security Entitlements in respect thereof, and all rights of the Borrower in respect of the foregoing;

(iii) all Accounts;

(iv) all Chattel Paper;

(v) all cash and Deposit Accounts;

- (vi) all Documents;
- (vii) all General Intangibles;
- (viii) all Instruments;
- (ix) all Investment Property;
- (x) all Letter-of-Credit Rights;
- (xi) all books and records of the Borrower pertaining to any of its Collateral; and
- (xii) all Proceeds of the Collateral described in the foregoing clauses (ii) through (xi).

(b) With respect to each right to payment or performance included in the Collateral from time to time, the Security Interest granted therein includes a continuing security interest in (i) any Supporting Obligation that supports such payment or performance and (ii) any Lien that (x) secures such right to payment or performance or (y) secures any such Supporting Obligation.

(c) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or transfer or in any way affect or modify, any obligation or liability of the Borrower with respect to any of the Collateral or any transaction in connection therewith.

Section 3. Representations, Warranties and Covenants of the Borrower.
The Borrower represents and warrants to the Collateral Agent and the Secured Parties as of the date hereof, and covenants with the Collateral Agent and the Secured Parties, as follows:

(a) The Borrower is a limited liability company, validly existing and in good standing under the laws of the State of Delaware. The Borrower's exact legal name is correctly set forth on the signature page hereof. The Borrower's mailing address is c/o Federal Reserve Bank of New York, as Managing Member, 33 Liberty Street, New York, NY 10045, Attention: [REDACTED] and the address of its registered office is 615 S. DuPont Highway, Dover, DE 19901. The Borrower will provide the Collateral Agent with at least 60 days' prior written notice of any change in the Borrower's name, form, jurisdiction of organization, organizational identification number, federal tax identification number, mailing address or the address of its registered office from that provided to the Collateral Agent on the Closing Date.

(b) The Borrower has good and marketable title to all of the Collateral, and has not granted any security interest in, or Lien on, any of the Collateral other than the Security Interest. The Borrower has full power and authority to grant to the Collateral Agent (for the benefit of the Secured Parties) the Security Interest.

The Borrower has not performed any acts that might prevent the Collateral Agent from enforcing any of the provisions of this Agreement. No financing statement, security agreement, mortgage or similar or equivalent document or instrument covering all or part of the Collateral is on file or of record in any jurisdiction in which such filing or recording would be effective to perfect or record a Lien on such Collateral except for the Security Interest. After the date of this Agreement, no Collateral will be in the possession or under the Control of any other Person having a claim thereto or security interest therein, other than the Security Interest.

(c) The Security Interest on all Collateral owned by the Borrower (i) has been validly created, (ii) is one of first priority subject to Liens set forth in clauses (i) through (iv) of the definition of “Permitted Liens”, (iii) will attach to each item of such Collateral on the Closing Date (or, if the Borrower first obtains rights thereto on a later date, on such later date) and (iv) when so attached, will secure all the Secured Obligations.

(d) The Collateral Account is a Securities Account. Subject to the execution of the Collateral Account Control Agreement by the parties thereto, and subject to the representations and warranties made by the Securities Intermediary thereunder, and so long as the Financial Asset underlying any Security Entitlement owned by the Borrower is credited to the Collateral Account, (i) the Security Interest in such Security Entitlement will be perfected, subject to no prior Liens or rights of others, (ii) the Collateral Agent will have Control of such Security Entitlement and (iii) no action based on an “adverse claim” (as defined in Article 8 of the UCC) to such Security Entitlement or such Financial Asset, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may be asserted against the Collateral Agent or any other Secured Party.

(e) When a UCC financing statement describing the Collateral as “all assets” or “all personal property” (or other words to that effect) has been filed in the State of Delaware, the Security Interest will constitute a perfected security interest in the Collateral to the extent that a security interest therein may be perfected by filing a financing statement pursuant to the Delaware UCC, prior to all Liens and rights of others therein. Except for the filing of such UCC financing statement, no registration, recordation or filing with any governmental body, agency or official is required in connection with the execution or delivery of this Agreement or the Collateral Account Control Agreement or is necessary for the validity or enforceability thereof or for the perfection or due recordation of the Security Interest or for the enforcement of the Security Interest.

(f) The Borrower will promptly give to the Collateral Agent copies of any notices and other communications received by it with respect to Security Entitlements as to which the Borrower is the Entitlement Holder.

(g) The Borrower will, from time to time, at its expense, execute, deliver, file and record any statement, assignment, instrument, document, agreement or other paper and take any other action (including any filing of

financing or continuation statements under the UCC) that from time to time may be necessary or desirable, or that the Collateral Agent may reasonably request, in order to (i) create, preserve, perfect, confirm or validate the Security Interest, (ii) cause the Collateral Agent to have Control of any item of Collateral (if applicable), (iii) enable the Collateral Agent or the Controlling Party to obtain the full benefits of the Security Documents or (iv) enable the Collateral Agent to exercise and enforce any of its rights, powers and remedies with respect to the Collateral. The Borrower authorizes the Collateral Agent to execute and file such financing statements or continuation statements in such jurisdictions with such descriptions of collateral (including “**all assets**” or “**all personal property**” or other words to that effect) and other information set forth therein as the Collateral Agent may deem necessary or desirable for the purposes set forth in the preceding sentence. The Borrower also ratifies its authorization for the Collateral Agent to file in any such jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(h) The Borrower will, promptly upon request, provide to the Collateral Agent all information and evidence concerning the Collateral that the Collateral Agent may reasonably request from time to time to enable it to enforce the provisions of this Agreement.

(i) Promptly following a request from the Collateral Agent or the Controlling Party to do so, and at the Borrower’s own expense, the Borrower agrees (i) to take all such lawful action as the Collateral Agent or the Controlling Party may request to compel or secure the performance and observance by any obligor of its obligations to the Borrower under or in connection with (A) agreements or instruments pursuant to which any Collateral is issued in accordance with the terms thereof (provided that such action is not inconsistent with or in violation of any of the Borrower’s obligations under such agreements or instruments) and (B) any Transaction Document in accordance with the terms thereof (provided that such action is not inconsistent with or in violation of any of the Borrower’s obligations under such Transaction Documents) and (ii) to exercise any and all rights, remedies, powers and privileges lawfully available to the Borrower, as owner of the Collateral, under or in connection with such agreements or instruments, or under or in connection with any Transaction Document, in each case to the extent and in the manner directed by the Collateral Agent or by the Controlling Party, including the transmission of notices of default and the institution of legal or administrative actions or proceedings to compel or secure performance by any such Person of its obligations thereunder. The Borrower further agrees that it will not (A) exercise any right, remedy, power or privilege available to it under or in connection with the agreements or instruments pursuant to which any Collateral is issued or under or in connection with any Transaction Document, (B) take any action to compel or secure performance or observance by any Person of its obligations to the Borrower as holder of the Collateral under or in connection with such agreements or instruments or under or in connection with any Transaction Document or (C) give any consent, request,

notice, direction, approval, extension or waiver to any Person under the agreements or instruments pursuant to which any Collateral is issued or under any Transaction Document, in each case not required to be exercised, taken, observed or given by the Borrower pursuant to the terms thereof unless, in each case, it has obtained the prior written consent of the Controlling Party and such action is not inconsistent with or in violation of any of the Borrower's obligations under such agreements, instruments or Transaction Documents, as the case may be.

- (j) The Borrower owns no assets other than the Collateral.

Section 4. *Administration of Collateral.*

(a) The Collateral Agent shall at all times have all the rights of a secured party under the UCC (whether or not in effect in the jurisdiction where such rights are exercised) with respect to the Collateral. In addition, the Collateral Agent shall, upon Proper Instructions from the Controlling Party, and whether or not an Event of Default has occurred, sell, lease, license or otherwise dispose of the Collateral or any part thereof, in one or more parcels at public or private sale, at any exchange, broker's board or at any of Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable, irrespective of the impact of any such sales on the market price of the Collateral. To the maximum extent permitted by applicable law, any Secured Party may be the purchaser of any or all of the Collateral at any such sale and (with the consent of the Controlling Party, which may be withheld in its reasonable discretion) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply all or any part of its Secured Obligations as a credit on account of the purchase price of any Collateral payable at such sale. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Borrower or such officer or be answerable in any way for the misapplication thereof. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of the Borrower, and the Borrower hereby waives (to the extent permitted by law) all rights of redemption, stay or appraisal that it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Collateral Agent shall not be obliged to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. To the maximum extent permitted by law, the Borrower hereby waives any claim against the Collateral Agent arising because the price at which any Collateral may have been sold at

such a private sale was less than the price that might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. The Collateral Agent may, with the consent of the Controlling Party, disclaim any warranty, as to title or as to any other matter, in connection with such sale or other disposition, and its doing so shall not be considered adversely to affect the commercial reasonableness of such sale or other disposition.

(b) If the Collateral Agent sells any of the Collateral upon credit, the Borrower will be credited only with payment actually made by the purchaser, received by the Collateral Agent and applied in accordance with Section 5(b) hereof. If the purchaser fails to pay for the Collateral, the Collateral Agent may resell the same, subject to the same rights and duties set forth herein.

(c) Any and all interest and other cash and non-cash distributions in respect of any Collateral, any and all payments received upon disposition of any Collateral and any and all other Proceeds of any Collateral shall be paid directly to, and shall be received and held in, the Collateral Account (*provided*, that only the proceeds of Loans, and no other amounts, shall be received and held in the Loan Proceeds Account). If any Proceeds of the Collateral are received by the Borrower otherwise than in the Collateral Account, such Proceeds shall be so received in trust for the Collateral Agent, shall be segregated from other funds and property of the Borrower and shall be forthwith delivered to the Securities Intermediary for deposit in the Collateral Account in the same form as received, with any necessary endorsements.

(d) The Controlling Party agrees that the instructions included in any Proper Instructions delivered to the Collateral Agent pursuant to Section 4(a) shall be consistent with an Approved Disposition Plan (it being understood that the Collateral Agent shall be entitled to rely on instructions with respect to any sale, lease, license or disposition of the Collateral contained in such Proper Instructions, and shall have no obligation to confirm that any such sale, lease, license or disposition of the Collateral is in accordance with an Approved Disposition Plan).

Section 5. *Collateral Account and Application of Proceeds.*

(a) *Collateral Account.* The Collateral Agent shall have Control over the Collateral Account. The Borrower will make no transfers or withdrawals from the Collateral Account except (i) for application in accordance with the Waterfall, (ii) for application in accordance with Section 5(c), (iii) to pay the Purchase Consideration for Purchased Assets in accordance with Section 5(d) or (iv) otherwise in accordance with Proper Instructions from the Controlling Party and the Subordinated Lender. The Borrower, the Collateral Agent and the Securities Intermediary shall always be party to the Collateral Account Control Agreement. The Collateral Account may be further sub-divided into sub-accounts. Funds on deposit in the Collateral Account shall be invested, applied or distributed in the manner set forth in this Section 5.

(b) *Application of Proceeds.* All amounts available in the Collateral Account (other than amounts available in the Loan Proceeds Account) as of each Payment Determination Date shall be distributed by the Collateral Agent on the first following Payment Date in accordance with a Payment Calculation Report delivered to, and approved by, the Controlling Party in accordance with the Administration Agreement prior to such Payment Date, in the following order of priority, subject to clause (c) of this Section:

first, to pay any Costs and Expenses then due and payable, any Fees then due and payable and any indemnity amounts and any other amounts then owing under any of the Transaction Documents to any Person (except as otherwise provided for in this Section 5 and in accordance with Proper Instructions), in each case, to the extent such Costs and Expenses, Fees and indemnity and other amounts, as applicable, have been incurred no later than two Business Days prior to the Payment Determination Date immediately preceding such Payment Date and have been invoiced no later than such Payment Determination Date, which payments shall be distributed to the Persons to whom such amounts are owing; *provided* that to the extent that amounts on deposit in the Collateral Account (other than amounts on deposit in the Loan Proceeds Account) are insufficient to pay all amounts that are owing pursuant to this clause first on any Payment Date, amounts will be distributed ratably to the Persons to whom such amounts are owed pursuant to this clause first;

second, to fund the Expense Reimbursement Account until the balance thereof is equal to \$15,000,000, or such other amount as may be specified by the Controlling Party and the Subordinated Lender pursuant to a Proper Instruction;

third, to pay the outstanding principal amount of the Senior Loans until such outstanding principal amount shall have been paid in full;

fourth, on or prior to the last day of the Senior Loan Availability Period, to fund the Cash Collateral Account until the balance thereof is equal to the amount of the Available Senior Loan Commitment, or such lesser amount as may be specified by the Controlling Party pursuant to a Proper Instruction;

fifth, to pay the outstanding principal amount of the Subordinated Loans until such outstanding principal amount shall have been paid in full;

sixth, to pay the accrued but unpaid interest (including Post-Petition Amounts, to the fullest extent permitted by applicable law, but excluding Contingent Interest) outstanding on the Senior Loans, until such accrued but unpaid interest shall have been paid in full;

seventh, to pay the accrued but unpaid interest (including Post-Petition Amounts, to the fullest extent permitted by applicable law, but excluding Contingent Interest) outstanding on the Subordinated Loans, until such accrued but unpaid interest shall have been paid in full;

eighth, to pay any other Secured Obligations (other than Contingent Interest) then outstanding;

ninth, to pay (x) 90% of all remaining amounts to the Subordinated Lender as Contingent Interest, and (y) 10% of all remaining amounts to the Senior Lender as Contingent Interest.

(c) *Expense Reimbursement Account.* The Collateral Agent shall, from time to time, credit any proceeds from the Collateral promptly upon receipt of such proceeds to the Expense Reimbursement Account (up to the maximum amount set forth in Section 5(b)). Amounts available in the Expense Reimbursement Account shall be distributed by the Collateral Agent, at any time and from time to time pursuant to Proper Instructions from the Controlling Party or its designee, (i) to pay investment execution expenses incurred by the Collateral Agent pursuant to a Proper Instruction or the Investment Manager in connection with investments made on behalf of the Borrower pursuant to the Investment Manager Agreement, including third party commissions, (ii) to reimburse the Securities Intermediary for any monies improperly credited to the Collateral Account or in connection with failed trades, assumed settlements, returned funds, bounced checks, other account overdrafts or advances of cash or securities pursuant to the Collateral Account Control Agreement and (iii) other Costs and Expenses incurred by, or in the name of, the Borrower that are due and payable between Payment Dates; *provided*, that the Expense Reimbursement Sub Account will not be used to pay Costs and Expenses (other than any Costs and Expenses referred to in this Section 5(c)).

(d) *Funding of Purchases.* In accordance with Proper Instructions received from the Controlling Party from time to time, the Collateral Agent shall withdraw amounts available in the Cash Collateral Account and the Loan Proceeds Account to fund, on the date of such withdrawal, Purchases by the Borrower of Purchased Assets pursuant to the Put Option Agreement; *provided*, that amounts may not be withdrawn from the Loan Proceeds Account pursuant to this Section 5(d) at any time when funds are available in the Cash Collateral Account (unless all such funds available in the Cash Collateral Account shall be simultaneously withdrawn pursuant to this Section 5(d)).

(e) *Notice of Adverse Claims.* The Collateral Agent shall give the Borrower, the Investment Manager, the Senior Lender, the Subordinated Lender and the Controlling Party prompt notice if (x) the Collateral Agent receives written notice or (y) (i) any officer or employee of the Collateral Agent involved with the administration of the transactions and agreements contemplated by this Agreement and the other Transaction Documents and the Collateral, (ii) any

officer or employee within the Collateral Agent's office of the general counsel or office of the corporate secretary, (iii) any officer or employee employed in the corporate trust division or to whom corporate trust matters are generally referred or (iv) any other officer of the Collateral Agent otherwise becomes aware that the Collateral Account or any Financial Assets held therein or credited thereto or any Securities Entitlement in respect thereof become subject to any writ, order, judgment, warrant of attachment, execution or similar process.

(f) *Permitted Investments of Funds in the Collateral Account.* Any funds held in the Collateral Account shall be invested, and the proceeds of investments shall be reinvested, by the Collateral Agent in Permitted Investments in accordance with Proper Instructions from the Controlling Party or its designee. The Collateral Agent (x) shall be entitled to rely on instructions with respect to investments contained in any such Proper Instruction and shall have no obligation to confirm that such investments are Permitted Investments and (y) shall not be responsible or liable for any loss resulting from the investment performance of an investment or reinvestment of funds held in the Collateral Account and shall not be responsible for giving any investment advice. In the absence of any Proper Instruction from the Controlling Party or its designee, the Collateral Agent shall be under no obligation or duty to invest (or pay interest on) funds held in the Collateral Account.

(g) *Statement of Account.* The Collateral Agent from time to time shall provide the Borrower, the Investment Manager, the Controlling Party, the Senior Lender and the Subordinated Lender upon written request with statements of account relative to the Collateral Account in accordance with the Collateral Agent's customary practices; *provided* that (x) statements of account shall be provided to each of the foregoing Persons not less frequently than monthly notwithstanding the lack of a written request and (y) to the extent that the information contained in such statements of account is supplied by an institution or institutions other than the Collateral Agent, the Collateral Agent shall not be responsible for the correctness or accuracy of the information received by it except to the extent that such information is manifestly incorrect and/or is not provided to the Collateral Agent by the time specified in this Agreement or in the other Transaction Documents and/or where relevant, is not substantially in the form set out in the relevant Transaction Document. If such information is not provided to the Collateral Agent by the time specified in this Agreement or in the other Transaction Documents and, where relevant, in the form set out in the relevant Transaction Document, or if such information is manifestly incorrect, the Collateral Agent shall use reasonable efforts to make the necessary calculations and shall incur no liability hereunder for any consequence resulting from making such calculations other than as a result of its negligence, bad faith, willful misconduct or fraudulent actions.

(h) *Instructions for Payment.* Any Officer's Certificate and Proper Instruction given to the Collateral Agent for payment out of the Collateral Account pursuant to this Agreement, including the Payment Calculation Report,

shall set forth on the face thereof the specific amounts of the allocations, payments, amounts, deposits, transfers or withdrawals addressed therein and such other information as shall be sufficient to enable the Collateral Agent to carry out the instruction and take the related actions in accordance with this Agreement. The Collateral Agent shall promptly comply with any such Proper Instruction made in accordance with the provisions of this Agreement.

Section 6. *Certain Agreements Among Secured Parties.*

(a) *Priorities; Additional Collateral.* Each Secured Party, by acceptance of the benefits of this Agreement and the other Transaction Documents agrees that such Secured Party will not hold, take, accept or obtain any Lien upon any of the Collateral to secure the payment and performance of the Secured Obligations, except the Security Interest.

(b) *Turnover of Collateral.* If a Secured Party acquires custody, control or possession of any Collateral or the proceeds therefrom other than pursuant to the terms of this Agreement, such Secured Party shall promptly (but in any event within five Business Days) cause such Collateral or proceeds to be delivered to the Collateral Agent in accordance with the provisions of this Agreement. Until such time as such Secured Party shall have complied with the provisions of the immediately preceding sentence, such Secured Party shall be deemed to hold such Collateral and proceeds in trust for the benefit of the Collateral Agent and the other Secured Parties.

(c) *Cooperation of Secured Parties.* Each Secured Party will cooperate with the Collateral Agent and with each other Secured Party as reasonably requested at Borrower's cost and expense in the enforcement of the Security Interest in the Collateral and otherwise in order to accomplish the purposes of this Agreement and the Security Documents.

(d) *Limitation upon Certain Independent Actions by Secured Parties.* No Secured Party other than the Controlling Party shall have any right to institute any action or proceeding to enforce any term or provision of the Security Documents or to enforce any of its rights in respect of the Collateral or to exercise any other remedy pursuant to the Security Documents or at law or in equity for the purpose of realizing on the Collateral, or by reason of jeopardy of any Collateral, or for the execution of any trust or power hereunder (collectively, the "**Specified Actions**"). The Controlling Party may act on behalf of the Secured Parties or any of them and shall be entitled to commence proceedings in any court of competent jurisdiction or to take any other Specified Actions as the Collateral Agent might have taken pursuant to this Agreement or the Security Documents. The Borrower acknowledges and agrees that should the Controlling Party act in accordance with this provision, the Controlling Party will have all the rights, remedies, benefits and powers as are granted to the Collateral Agent pursuant this Agreement and the other Security Documents.

(e) *No Challenges.* In no event shall any Secured Party take any action to challenge, contest or dispute the validity, extent, enforceability or priority of the Security Interest hereunder or under any other Security Document with respect to any of the Collateral, or that would have the effect of invalidating the Security Interest or support any Person who takes any such action. Each of the Secured Parties agrees that it will not take any action to challenge, contest or dispute the validity, enforceability or secured status of any other Secured Party's claims against the Borrower (other than any such claim resulting from a breach of this Agreement by a Secured Party, or any challenge, contest or dispute alleging arithmetical error in the determination of a claim), or that would have the effect of invalidating any such claim, or support any Person who takes any such action.

Section 7. *The Collateral Agent.*

(a) Employment of Collateral Agent and Property to be Held.

(i) Each Secured Party hereby appoints the Collateral Agent as an agent, and custodian of assets, of the Borrower and authorizes the Collateral Agent (A) to sign and deliver the Security Documents as Collateral Agent and (B) to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms of the Transaction Documents, together with such actions and powers as are reasonably incidental thereto.

(ii) Concurrently with the execution of this Agreement, and from time to time thereafter, as appropriate, the Controlling Party and the Subordinated Lender shall each deliver to the Collateral Agent, duly certified by an authorized officer of the Controlling Party or the Subordinated Lender, as the case may be, a certificate substantially in the form set forth in Exhibit B hereof setting forth the names, titles, signatures and scope of authority of all persons authorized to give Proper Instructions or any other notice, request, direction, instruction, certificate or instrument on behalf of such Person. Such certificate may be accepted and relied upon by the Collateral Agent as conclusive evidence of the facts set forth therein and shall be considered to be in full force and effect until receipt by the Collateral Agent of a similar certificate to the contrary.

(iii) **“Proper Instructions,”** as such term is used throughout this Agreement and other Transaction Documents, means a writing signed by the Controlling Party or by one or more person or persons as the Controlling Party shall have from time to time authorized to give instructions to the Collateral Agent and, to the extent expressly required by the terms of this Agreement, also by the Subordinated Lender or by one or more person or persons as the Subordinated Lender shall have from time to time authorized to give instructions to the Collateral Agent. Proper Instructions may be standing instructions. Each such writing shall set forth the specific transaction or type of transaction involved and may

set forth any appropriate procedures to be followed. Proper Instructions may include communications effected (x) directly between electro-mechanical or electronic devices in accordance with security procedures agreed to by the Controlling Party in any such writing or (y) by other means if and to the extent that the Controlling Party, the Subordinated Lender and the Collateral Agent shall have agreed in writing to permit such other means.

(b) *Limited Duties and Responsibilities.* The Collateral Agent shall not have any duties or obligations except those expressly set forth in this Agreement and the other Transaction Documents to which it is a party. Without limiting the generality of the foregoing, (i) the Collateral Agent shall not be subject to any fiduciary or other implied duties, implied covenants or implied obligations pursuant to this Agreement or any other Transaction Document, regardless of whether an Event of Default has occurred and is continuing, (ii) the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary action and discretionary powers expressly contemplated by the Transaction Documents that the Collateral Agent is required to exercise by Proper Instructions and (iii) except as expressly set forth in the Transaction Documents, the Collateral Agent shall not have any duty to disclose, and shall not be liable for any failure to disclose, any information relating to the Borrower that is communicated to or obtained by the Collateral Agent or any of its Affiliates in any capacity other than its Administrator capacity. The Collateral Agent shall not be liable for (A) any action taken or not taken by it in accordance with Proper Instructions or (B) any action taken or not taken by it with the consent or at the request of the Controlling Party or in accordance with this Agreement or any of the Transaction Documents or in the absence of its own negligence, bad faith, willful misconduct or fraudulent actions. The Collateral Agent shall be deemed not to have knowledge of any Event of Default unless and until written notice thereof is given to the Collateral Agent by the Borrower or the Controlling Party or any Lender, and the Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with any Transaction Document, the contents of any certificate, report or other document delivered thereunder or in connection therewith or (B) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Transaction Document, the validity, enforceability, effectiveness or genuineness of any Transaction Document or any other agreement, instrument or document, other than to confirm receipt of items expressly required to be delivered to the Collateral Agent. The Collateral Agent shall not be responsible for the existence, genuineness or value of any Collateral or for the validity, perfection, priority or enforceability of the Security Interest, whether impaired by operation of law or by reason of any action or omission to act on its part under the Security Documents, absent its own negligence, bad faith, willful misconduct or fraudulent actions.

(c) *Duties of the Collateral Agent with Respect to Property of the Borrower.*

(i) *Holding Securities.* The Collateral Agent shall hold and segregate for the account of the Borrower all non-cash property to be held by it, including all securities owned by the Borrower, other than securities which are maintained in a clearing agency which acts as a securities depository or in a book-entry system authorized by the U.S. Department of the Treasury and certain federal agencies (each, a “**Securities System**”).

(ii) *Delivery of Securities.* The Collateral Agent shall release and deliver securities owned by the Borrower held by the Collateral Agent in a Securities System account of the Collateral Agent only upon receipt of Proper Instructions, which may be continuing instructions when deemed appropriate by the parties, and:

(A) To the issuer thereof or its agent when such securities are called, redeemed, retired or otherwise become payable; *provided* that in any such case, the cash or other consideration payable in connection therewith is to be delivered to the Collateral Agent;

(B) To the issuer thereof, or its agent, for transfer into the name of the Borrower or into the name of any nominee or nominees of the Collateral Agent; or for exchange for a different number of bonds, certificates or other evidence representing the same aggregate face amount or number of units; *provided* that in any such case, the new securities are to be delivered to the Collateral Agent;

(C) For any other purpose, but only upon receipt of Proper Instructions specifying the securities to be delivered and the person(s) to whom delivery of such securities shall be made.

(iii) *“Financial Assets” Election.* The Collateral Agent and the Borrower agree that each item of property (whether Investment Property, Financial Asset, Security, Instrument, cash or other property) credited to the Collateral Account shall be treated as a “**Financial Asset**” within the meaning of Sections 8 102(a)(9) and 8 103 of the UCC.

(iv) *Registration of Securities.* All securities accepted by the Collateral Agent on behalf of the Borrower under the terms of this Agreement shall be in “street name” or other good delivery form. If, however, the Borrower (or the Controlling Party) directs the Collateral Agent to maintain securities in “street name”, the Collateral Agent shall utilize its best efforts only to timely collect income due the Borrower on such securities and to notify the Borrower, the Controlling Party and the

Investment Manager on a best efforts basis only of relevant corporate actions including, without limitation, pendency of calls, maturities, tender or exchange offers. The Borrower and Collateral Agent shall cooperate to cause (i) Securities in certificated form held by the Collateral Agent to be in suitable form for transfer by delivery, or accompanied by duly executed instruments of transfer or assignment in blank, with signatures appropriately guaranteed, all in form and substance satisfactory to the Controlling Party and (ii) securities that are “uncertificated securities” (as defined in Section 8-102 of the UCC) that are not registered in the name of the Collateral Agent to be subject to a control agreement whereby the issuer of the uncertificated securities agrees to comply with any “instruction” (as defined in Section 8-102 of the UCC) originated by the Collateral Agent and relating to such securities without further consent by the Borrower or any other person.

(v) *Bank Accounts.* The Collateral Agent shall open and maintain a separate bank account or accounts in the United States in the name of the Borrower, subject only to draft or order by the Collateral Agent acting pursuant to the terms of this Agreement, and shall hold in such account or accounts, subject to the provisions hereof, all cash received by it from or for the account of the Borrower. Any such bank account shall, absent a Proper Instruction to the contrary, be held as a sub-account of the Collateral Account.

(vi) *Collection of Income.* The Collateral Agent shall collect on a timely basis all income and other payments with respect to registered securities held hereunder to which the Borrower shall be entitled either by law or pursuant to custom in the securities business, and shall collect on a timely basis all income and other payments with respect to bearer securities if, on the date of payment by the issuer, such securities are held by the Collateral Agent or its agent thereof, and shall credit such income, as collected, to the Collateral Account. Such amounts shall be invested pending application thereof in accordance with Section 5 as directed under a Proper Instruction. Without limiting the generality of the foregoing, the Collateral Agent shall detach and present for payment all coupons and other income items requiring presentation as and when they become due and shall collect interest when due on securities held hereunder.

(vii) *Payment of Borrower Monies.* Upon receipt of Proper Instructions, which may be continuing instructions if so specified in such Proper Instructions, the Collateral Agent shall pay out monies of the Borrower in accordance with Section 5 hereof.

(viii) *Deposit of Borrower Assets in Securities Systems.* The Collateral Agent may deposit and/or maintain securities owned by the Borrower in a Securities System in accordance with applicable Board of Governors of the Federal Reserve System and Securities and Exchange

Commission rules and regulations, if any, and to the extent applicable hereto.

(ix) *Ownership Certificates for Tax Purposes.* The Collateral Agent shall execute ownership and other certificates and affidavits for all federal and state tax purposes in connection with receipt of income or other payments with respect to securities of the Borrower held by it and in connection with transfers of such securities.

(x) *Communications Relating to Borrower Securities.* The Collateral Agent shall forward promptly to the Borrower (with a copy to the Controlling Party and the Investment Manager all written information and communications (including, without limitation, pendency of calls, solicitations for amendments, modifications, consents, waivers and maturities of securities) received by the Collateral Agent from issuers of the securities being held for the Borrower and shall, in accordance with Proper Instructions, transmit promptly to such issuers instructions, directions and notes relating to such securities.

(xi) *Reports to the Borrower, the Controlling Party, the Lenders and the Investment Manager by Independent Public Accountants.* The Collateral Agent shall provide the Borrower, the Controlling Party, each Lender that is not the Controlling Party and the Investment Manager at such times as such Persons may reasonably require, with reports by independent public accountants on the accounting system, internal accounting control and procedures for safeguarding securities, including securities deposited and/or maintained in a Securities System, relating to the services provided by the Collateral Agent under this Agreement. Such reports shall be of sufficient scope and in sufficient detail, as may reasonably be required by the Borrower (or the Controlling Party, each Lender that is not the Controlling Party or the Investment Manager) to provide reasonable assurance that any material inadequacies would be disclosed by such examination, and, if there are no such inadequacies, the reports shall so state.

(d) *Evidence of Authority.* Absent negligence, bad faith, willful misconduct or fraudulent actions, the Collateral Agent shall be entitled to rely on, and shall not incur any liability for relying on, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Collateral Agent may receive and accept a certificate of a Responsible Officer of the Controlling Party as conclusive evidence of the authority of any person to act in accordance with such certificate or of a Responsible Officer of the Managing Member as conclusive evidence of any determination or of any action by the Managing Member pursuant to the LLC Agreement as described in such certificate, and such certificate may be considered as in full force and effect until receipt by the Collateral Agent of written notice to the contrary. The Collateral

Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in reasonable reliance upon the advice of any such counsel, accountants or experts.

(e) *Duties of Collateral Agent with Respect to the Books of Account and Calculation of Net Asset Value and Net Income.* The Collateral Agent shall cooperate with and supply necessary information to the entity or entities appointed by the Borrower or the Administrator to keep the books of account of the Borrower and/or compute the net asset value per Membership Interest of the Borrower of the outstanding Membership Interests of the Borrower or, if directed in writing to do so by the Borrower (or the Controlling Party), shall itself keep such books of account and/or compute such net asset value per Membership Interest of the Borrower.

(f) *Other Custody Services.* The Collateral Agent shall provide such other services customarily provided by a collateral agent in connection with the holding of collateral as specifically requested by Proper Instructions.

(g) *Information as to Secured Obligations.* For all purposes of the Security Documents, including determining the aggregate amount of Secured Obligations or the amount of Secured Obligations owed to the Senior Lender, the Subordinated Lender or any other Secured Party, the Collateral Agent will be entitled to rely on information from any such Lender as to amounts owned to such Lender, the Controlling Party, the Borrower, the Administrator or its own records (or such party as the Controlling Party may direct in a Proper Instruction with respect to other amounts).

(h) *Resignation; Successor Collateral Agent.* The Collateral Agent may resign at any time for any reason, and the Controlling Party may, in its sole discretion, remove the Collateral Agent at any time for any reason, in each case upon not less than 30 days' prior written notice to each other Party; *provided* that no resignation of the Collateral Agent shall be effective until the Controlling Party shall have appointed a successor Collateral Agent to which the Subordinated Lender shall not have reasonably objected within five Business Days after having been given written notice thereof. If the Controlling Party shall fail to appoint such successor within 90 days after notice of resignation or removal, as the case may be, then the Collateral Agent may petition any court of competent jurisdiction for the appointment of such successor at the sole cost and expense of the Controlling Party. The indemnity provided to the Collateral Agent under Section 12 shall survive its resignation or removal under this Agreement with respect to any indemnified liabilities to the extent incurred or arising, or relating to events occurring, before such resignation or removal. Upon acceptance in writing of its appointment as Collateral Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be, upon transfer of the Collateral Account and possession of all

Collateral in its control to such successor, discharged from its duties hereunder. As of the resignation date, fees and reimbursement expenses shall be paid to the Collateral Agent in accordance with the Waterfall on the next succeeding Payment Date. The fees payable by the Borrower to a successor Collateral Agent shall be the same as those payable to its predecessor unless otherwise agreed by the Borrower and such successor. After the Collateral Agent's resignation hereunder, the provisions of this clause shall continue in effect for the benefit of such retiring Collateral Agent and its respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Collateral Agent was acting as Collateral Agent.

(i) *Authority to Administer Collateral.* Without derogation of the Collateral Agent's duties under this Section, as further security for the Secured Obligations, the Borrower hereby appoints the Collateral Agent as its true and lawful attorney, with full power of substitution, in the name of the Borrower, the Collateral Agent or otherwise, for the sole use and benefit of the Collateral Agent, but at the expense of the Borrower, to the extent permitted by law, for the purpose of taking such action and executing agreements, instruments and other documents, in the name of the Borrower, as expressly provided herein and as the Collateral Agent or the Controlling Party may deem necessary or advisable to accomplish the purposes hereof, including to exercise, at any time and from time to time, all or any of the following powers with respect to all or any of the Collateral:

(i) to demand, sue for, collect, receive and give acquittance for any and all monies due or to become due upon or by virtue thereof;

(ii) to settle, compromise, compound, prosecute or defend any action or proceeding with respect thereto;

(iii) to sell, lease, license or otherwise dispose of the same or the proceeds or avails thereof, as fully and effectually as if the Collateral Agent were the absolute owner thereof; and

(iv) to extend the time of payment of any or all thereof and to make any allowance or other adjustment with reference thereto;

provided that with respect to dispositions of any Collateral under this Agreement after the occurrence of an Event of Default, except in the case of Collateral that threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Collateral Agent will give the Controlling Party and the Borrower at least ten days prior written notice of the time and place of any public sale thereof or the time after which any private sale or other intended disposition thereof will be made. Any such notice shall (x) contain the information specified in UCC Section 9-613, (y) be Authenticated and (z) be sent to the Parties required to be notified pursuant to UCC Section 9-611(c); *provided further* that if the Collateral Agent fails to comply with this sentence in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of

law under the UCC; and *provided further* that in taking, or refusing to take, any action pursuant to this Section 7(i), the Collateral Agent shall not take any action contrary to any Proper Instruction.

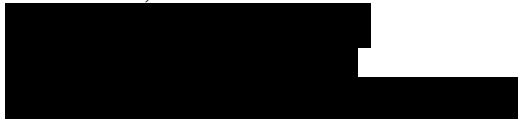
Section 8. *Waivers; Amendment.*

(a) No failure or delay of the Collateral Agent or any other Party in exercising any power or right hereunder or under any other Security Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies hereunder and under the other Security Documents are cumulative and are not exclusive of any rights or remedies that it would otherwise have. No waiver of any provision of this Agreement or any other Security Document or consent to any departure by the Collateral Agent or any other Party shall in any event be effective unless the same shall be by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Collateral Agent in any case shall entitle the Collateral Agent to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except in accordance with the provisions of Section 9.01 of the Credit Agreement; *provided* that without the consent of the Collateral Agent, no modification, supplement or waiver of the Agreement may modify the terms of Section 7 or any other term or provision that materially and adversely affects the rights, immunity, indemnity, duties, obligations liabilities or protection of the Collateral Agent hereunder. Any such amendment, supplement, modification or waiver shall be binding upon the Collateral Agent, each other Secured Party and the Borrower. Any purported amendment, waiver, supplement or modification not complying with the terms of this Section shall be null and void.

Section 9. *Notices.* Each notice, request or other communication given to the Borrower, the Senior Lender, the Subordinated Lender or the Controlling Party hereunder shall be given in accordance with Section 9.02 of the Credit Agreement (or to such other recipient or address as may be hereafter notified by the respective parties hereto). Each notice, request or other communication given to the Collateral Agent hereunder shall be addressed as follows or to such other recipient or address as may be hereafter notified by the respective parties hereto:

The Bank of New York Mellon
QSR Administration
101 Barclay Street, 4E
New York, New York 10286



Section 10. *Binding Effect.* This Agreement shall become effective when a counterpart hereof shall have been executed by each of the Parties and delivered to the Controlling Party.

Section 11. *Survival of Agreement.* All covenants, agreements, representations and warranties made by the Collateral Agent herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Transaction Document shall be considered to have been relied upon by each Secured Party, regardless of any investigation made by any such Secured Party or on its behalf, and shall continue in full force and effect until the Borrower is liquidated in accordance with the LLC Agreement. Notwithstanding anything to the contrary herein, the provisions of this Section shall remain operative and in full force and effect regardless of the termination of this Agreement, the repayment in full of all of the Secured Obligations and the termination of all commitments to make Loans under the Credit Agreement, the invalidity or unenforceability of any term or provision of this Agreement or any other Transaction Document or any investigation made by or on behalf of any Party.

Section 12. *Expenses; Indemnity.*

(a) The Borrower agrees to pay in accordance with the Waterfall (i) all reasonable out-of-pocket expenses incurred by the Collateral Agent in connection with the administration and enforcement of this Agreement and the other Transaction Documents (including such reasonable expenses as are incurred in connection with the collection, sale or other disposition of any Collateral or to preserve the value of the Collateral or the validity, perfection, rank or value of the Security Interest), any amendments, modifications or waivers of the provisions hereof or thereof, or incurred by the Collateral Agent in connection with the enforcement or protection of their rights in connection with this Agreement and the other Transaction Documents, including in each case the reasonable fees, charges and disbursements of counsel, accountants, financial advisers and other experts engaged by the Collateral Agent; *provided* that no such expenses, fees, charges and disbursements shall be charged separately to the extent they are covered as part of the agreed payments of periodic fees to the Collateral Agent or the Administrator under the Fee Letter (or otherwise).

(b) The Borrower agrees to indemnify the Collateral Agent and each of its Related Parties, to the extent that such Related Party is acting in accordance with this Agreement or any other Transaction Document, including in accordance with a Proper Instruction (each such Person being called an “**Indemnatee**”) against, and to hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Indemnatee arising out of, in any way connected with or as a result of (i) the execution or delivery of this Agreement or any other Transaction Document or any agreement or

instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the transactions contemplated hereby or (ii) any claim, litigation, investigation or proceeding relating to the foregoing, whether or not any Indemnitee is a party thereto (and regardless of whether such matter is initiated by a third party or by the Borrower or any of its Affiliates); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted primarily from the bad faith, negligence, fraudulent actions or willful misconduct of such Indemnitee; *provided further* that the Borrower shall not be obligated to pay, indemnify or hold harmless any Indemnitee if such Indemnitee (A) does not provide reasonably prompt notice to the Borrower (with a copy to the Managing Member) of any claim for which indemnification is sought or (B) admits any liability or incurs any significant expenses after receiving actual written notice of the claim, or agrees to any settlement without the prior written consent of the Borrower. The Borrower may, in its sole discretion and at its expense, control the defense of the claim including, without limitation, designating counsel for the Indemnitees and controlling all negotiations, litigation, arbitration, settlements, compromises and appeals of any claim; *provided*, that if in the reasonable determination of an Indemnitee there exists a conflict of interest by reason of common representation such Indemnitee shall have the right to appoint separate counsel. In order to be paid any amount under this Section on any particular Payment Date in respect of any losses, claims, damages, liabilities or related expenses, in each case incurred no later than two Business Days prior to the Payment Determination Date immediately preceding such Payment Date, the request for payment under this Section must be received by the Borrower, the Managing Member and the Administrator no later than such Payment Determination Date.

(c) To the extent permitted by applicable law, no party shall assert, and each hereby waives, and no party shall have any indemnity obligation with respect to, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, or the transactions contemplated hereby.

(d) The provisions of this Section shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the repayment of any of the Secured Obligations, the reduction or termination of the commitments to make Loans under the Credit Agreement, the invalidity or unenforceability of any term or provision of this Agreement, the Credit Agreement or any other Transaction Document or any investigation made by or on behalf of any party hereto.

(e) If any transfer tax, documentary stamp tax or other tax is payable in connection with the Collateral or the Security Interest, the Borrower will pay such

tax and provide any required tax stamps to the Collateral Agent or as otherwise required by law.

Section 13. *Successors and Assigns.*

(a) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns permitted hereby, except that (i) the Collateral Agent may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Controlling Party and the Subordinated Lender (and any attempted assignment or transfer by the Collateral Agent without such consent shall be null and void), (ii) no other Secured Party (other than the Senior Lender) may assign or otherwise transfer (including through participation) any of its rights or obligations hereunder without the prior written consent of Federal Reserve Bank of New York (and any attempted assignment or transfer by any such Secured Party without such consent shall be null and void) and (iii) the Senior Lender may not assign or otherwise transfer (including through participation) any of its rights or obligations hereunder without the prior written consent of the Subordinated Lender (and any attempted assignment or transfer by the Senior Lender without such consent shall be null and void). If all or any part of any Secured Party's interest in any Secured Obligation is assigned or otherwise transferred, the transferor's rights hereunder, to the extent applicable to the obligation so transferred, shall be automatically transferred with such Secured Obligation.

(b) Any Person (i) into which the Collateral Agent may be merged or consolidated, (ii) which may result from any merger, conversion or consolidation to which the Collateral Agent shall be a party or (iii) succeeding to the business of the Collateral Agent, which Person, in any of the foregoing cases executes an agreement of assumption to perform every obligation of the Collateral Agent hereunder, shall be the successor to the Collateral Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the Parties to this Agreement, notwithstanding anything in this Agreement to the contrary. The Collateral Agent shall provide prior written notice of any merger, consolidation or succession pursuant to this clause to the Borrower and the Controlling Party.

Section 14. *Counterparts.* This Agreement may be executed in counterparts (and by different Parties on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 10. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 15. *Severability.* If any one or more of the provisions contained in this Agreement or in any other Transaction Document should be held invalid, illegal or unenforceable in any respect to the extent permitted by applicable law, the validity, legality and enforceability of the remaining provisions contained

herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The Parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 16. *Integration.* This Agreement and the other Transaction Documents represent the entire agreement of the Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Borrower, any Secured Party or the Controlling Party relative to the subject matter hereof not expressly set forth or referred to herein or in the other Transaction Documents.

Section 17. *Applicable Law.* THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES IF AND TO THE EXTENT SUCH LAW IS APPLICABLE, AND OTHERWISE IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE.

Section 18. *Submission to Jurisdiction; Venue; Etc.* Each of the Parties hereby irrevocably and unconditionally: (a) submits for itself and its property in any legal action or proceeding relating to this Agreement, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the courts of the United States for the Southern District of New York, and appellate courts thereof; *provided* that, notwithstanding the foregoing, if there is no basis for federal jurisdiction in respect of any such legal action or proceeding or recognition and enforcement action, then each party submits for itself and its property in any such legal action or proceeding or recognition and enforcement action to the exclusive jurisdiction of the courts of the State of New York located in the Borough of Manhattan in New York City, and appellate courts thereof; (b) consents that any such action or proceeding may be brought only in such courts and waives, to the maximum extent not prohibited by law, any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same; (c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid return receipt requested, in accordance with Section 9 of this Agreement; (d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law; (e) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in another jurisdiction by suit on the judgment or in any other matter provided by law; and (f) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover

in any legal action or proceeding any special, indirect, exemplary, punitive or consequential damages of any kind whatsoever (including for lost profits).

Section 19. *Confidentiality.* The Lenders and the Collateral Agent agree to keep confidential all nonpublic information provided to them by the Borrower (or the Administrator on behalf of the Borrower), the Collateral Agent, the Investment Manager, the Controlling Party or any other Person pursuant to or in connection with this Agreement, the other Transaction Documents or the MLSA in accordance with the confidentiality provisions applicable to the Lenders set forth in Section 9.14 of the Credit Agreement.

Section 20. **WAIVERS OF JURY TRIAL. EACH PARTY HERETO HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, COUNTERCLAIM, OR CROSS CLAIM ARISING IN CONNECTION WITH, OUT OF, OR OTHERWISE RELATING TO THIS AGREEMENT, THE COLLATERAL, OR ANY OTHER TRANSACTION DOCUMENT, OR ANY TRANSACTION OR AGREEMENT ARISING THEREFROM OR RELATED THERETO.**

Section 21. *Limited Recourse.* Notwithstanding anything to the contrary contained in this Agreement and the other Transaction Documents, the obligations of the Borrower under this Agreement and all other Transaction Documents are solely the obligations of the Borrower and shall be payable solely to the extent of funds received by and available to the Borrower in accordance with this Agreement and the other Transaction Documents. No recourse shall be had for the payment of any amount owing in respect of any obligation of, or claim against, the Borrower arising out of or based upon this Agreement or any other Transaction Document against any holder of a membership interest, employee, officer or Affiliate thereof and, except as specifically provided herein and in the other Transaction Documents, no recourse shall be had for the payment of any amount owing in respect of any obligation of, or claim against, the Borrower arising out of or based upon this Agreement against the Administrator, the Investment Manager or any holder of the membership interests of the Borrower or any Related Party of any thereof; *provided* that the foregoing shall not relieve any such person or entity from any liability they might otherwise have as a result of willful misconduct, gross negligence or fraudulent actions taken or omissions by them or, in the case of the Administrator or the Investment Manager or any Related Party thereof, the foregoing or its negligence in the performance of its duties under the Administration Agreement or the Investment Manager Agreement, as the case may be. The provisions of this Section 21 shall survive the termination or expiration of this Agreement and payment in full of all the Secured Obligations.

Section 22. *Headings.* Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and are not to affect

the construction of, or to be taken into consideration in interpreting, this Agreement.

Section 23. *Waiver of Right of Setoff.* The Collateral Agent waives all of its rights to set off and apply any Collateral at any time held and other obligations at any time owing by the Collateral Agent to or for the credit or the account of the Borrower or any Secured Party against the obligations of the Borrower or any Secured Party hereunder and under the other Transaction Documents, irrespective of whether or not the Collateral Agent shall have made any demand thereunder and although such obligations may be unmatured.

Section 24. *Instructions.* It is understood that any instruction required to be given, prepared and/or delivered by the Controlling Party or its designee pursuant to this Agreement will be given, prepared and/or delivered pursuant to a Proper Instruction.

Section 25. *Further Assurances.* Each Party agrees to do such further acts and things and to execute and deliver to the Borrower (or to the Controlling Party) such additional assignments, agreements, powers and instruments, as may be reasonably necessary to carry into effect the purposes of this Agreement.

Section 26. *Internal Controls.* The Collateral Agent shall provide its relevant SAS-70 reports to the Borrower on an annual basis, along with quarterly attestations that pertinent controls remain in place, and such Sarbanes-Oxley sub-certifications as are customarily provided by the Collateral Agent to its other customers similarly situated.

Section 27. *Role of the Controlling Party.* Each party agrees that, except as otherwise set forth in this Agreement and the other Transaction Documents, the Controlling Party has ultimate authority with respect to all decisions regarding the management of the Collateral (which it may delegate, in whole or in part, to the Investment Manager or otherwise).

Section 28. *No Petitions.* The Collateral Agent and each other Secured Party, by accepting the benefits hereof, hereby covenants and agrees that it will not at any time prior to a year and a day after all of the Secured Obligations are repaid in full, (a) commence or institute against the Borrower or join with or facilitate any other Person in commencing or instituting against the Borrower, any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, receivership, insolvency or liquidation proceedings, or other similar proceedings under any United States Federal or state, or other jurisdiction, bankruptcy or similar law or statute now or hereafter in effect or (b) participate in any assignment for benefit of creditors, compositions, or arrangements with respect to the Borrower's debts.

Section 29. *Maintenance of Books and Records.*

(a) For the term of this Agreement, the Collateral Agent shall keep and retain all information, materials and records in whatever format (collectively, “**Records**”) which it has or which come into its possession in connection with the services provided under this Agreement, in each case to the extent consistent with the Collateral Agent’s internal records maintenance and records retention policy; *provided* that prior to any destruction of any Records by the Collateral Agent in accordance with such policy, the Collateral Agent shall notify the Controlling Party and provide the Controlling Party with an opportunity to retrieve such Records from the Collateral Agent. Upon the termination of this Agreement or its services hereunder, the Collateral Agent and the Controlling Party shall, in good faith, agree on the timing and mechanism for transferring all Records to the Controlling Party. In transferring such Records, the Collateral Agent shall provide an Officer’s Certificate certifying that (i) it has kept and retained the Records in accordance with the requirements set forth herein and (ii) the Records being transferred represent all of the Records that have not been previously delivered or destroyed in compliance with this Section. Notwithstanding the foregoing, the Collateral Agent may make and retain copies of Records to satisfy existing internal audit, compliance or record retention requirements, provided that the Officer’s Certificate includes information as to the copies of Records that it is retaining.

(b) The Collateral Agent agrees to afford the Borrower, the Controlling Party, any Lender, the Investment Manager and the Administrator, and their respective authorized agents reasonable access during normal business hours to make examinations of the Records and to cause its personnel to assist in any such examinations of the Records, make extracts and allow copies of the Records to be made. Such examinations will be conducted in a manner which does not unreasonably interfere with the normal operations or employee relations of the Collateral Agent. The Collateral Agent shall, at the request of the Borrower, the Controlling Party, any Lender, the Investment Manager or the Administrator, supply such Person with a tabulation of securities owned by the Borrower and held by the Collateral Agent in connection with this Agreement and shall, when requested to do so and for such compensation as shall be agreed upon between the Borrower and the Collateral Agent, include certificate or CUSIP numbers in such tabulations. In addition, the Collateral Agent shall permit any Person designated by the Controlling Party, the Borrower, any Lender, the Administrator or the Investment Manager to discuss matters that fall within the scope of this engagement. Notwithstanding the foregoing but subject to the proviso at the end of this sentence, the Collateral Agent shall not be required to disclose (and agrees not to disclose or to permit the disclosure of) any information to the extent setting forth the unredacted identities of the borrowers of TALF Loans pursuant to this Section 29(b) without the consent of the Managing Member; *provided*, that the Collateral Agent may, to the extent it is authorized to do so under Section 19 hereof, disclose any information referred to in this sentence to the Board of Governors of the Federal Reserve System and any other U.S. regulatory authorities with direct supervisory authority over it.

(c) The Collateral Agent shall use commercially reasonable efforts to provide access to the Records by means of providing access to a suitable reporting platform.

Section 30. *Termination.* This Agreement and the Security Interest created or granted hereby shall terminate on the first date on which (x) (i) no Lender has any remaining commitment to make any Loans or (ii) the TALF Termination Date has occurred and (y) all Collateral has been fully liquidated and Disposed of and all proceeds thereof, including all amounts on deposit in the Collateral Account, have been distributed in accordance with the Waterfall.

[signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be
duly executed as of the date set forth above.

TALF LLC, as Borrower

By: FEDERAL RESERVE BANK OF
NEW YORK, as its sole Managing
Member

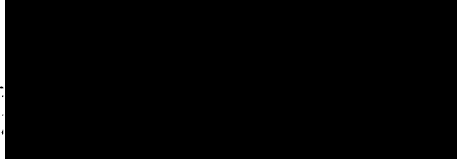
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[Signature Page to Security and Intercreditor Agreement]

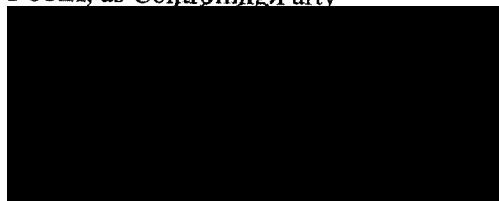
FEDERAL RESERVE BANK OF NEW
YORK, as Senior Leader

By:



FEDERAL RESERVE BANK OF NEW
YORK, as Controlling Party

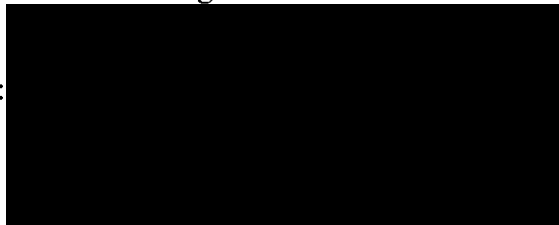
By:



[Signature Page to Security and Intercreditor Agreement]

THE BANK OF NEW YORK MELLON,
as Collateral Agent

By:



[Signature Page to Security and Intercreditor Agreement]

UNITED STATES DEPARTMENT OF
THE TREASURY, as Subordinated
Lender

By: 

Name:

Neel Kashkari

Title:

**Interim Assistant Secretary
For Financial Stability**

[Signature Page to Security and Intercreditor Agreement]